

## Fair Political Practices Commission

### Memorandum

**To:** Chairman Johnson, Commissioners Hodson, Huguenin, Leidigh & Remy

**From:** John W. Wallace, Assistant General Counsel  
Scott Hallabrin, General Counsel

**Subject:** **Supplemental Memorandum:** Adoption of: Regulation 18531.62:  
Elected State Officeholder Bank Accounts.  
Amendment to: Regulation 18544: Biennial Adjustments; Regulation  
18545: Contribution Limit and Voluntary Expenditure Ceiling Amounts

**Date:** April 23, 2007

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#### *I. Background*

In 2006 Senate Bill 145 took effect as urgency legislation. SB 145 (Stats. 2006, Ch. 624, urgency) amended the “net debt” provision (Section 85316) of the Political Reform Act (the “Act”).<sup>1</sup> The net debt provision prohibits post-election fundraising for any purpose other than to pay net debt. SB 145 allows the establishment of a separate officeholder account for officeholder expenses.

To immediately implement SB 145, the Commission adopted Regulations 18531.62, 18531.63, 18531.64 and the proposed amendment to Regulation 18544, as emergency regulations in January 2007. The emergency regulations will expire 120 days after their adoption, and this permanent version of the regulations is being proposed to take their place. New proposed Regulation 18531.62 is a merged version of all three of the emergency regulations.

The only new item, Regulation 18545, was added after the January meeting, and like the amendment to Regulation 18544, simply implements the required adjustment of the limits.

#### *II. Unresolved Issues from January*

The Commission requested further discussion of the following issues at permanent adoption:

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<sup>1</sup> Government Code Sections 81000 - 91014. Commission regulations appear at title 2, Sections 18109 - 18997, of the California Code of Regulations.

**(1) Definition of officeholder expenses (18531.62(d)(2)).** According to amended Section 85316, officeholder funds may not be used for contributions or transfers to any state or local committee. In addition, the proposed regulation would further refine what are *not* considered officeholder expenses and thus *could not* be paid from the officeholder account. At the January meeting, the Commission asked staff to explore two options in delineating what type of expenses could not be paid from the officeholder account. The first would reference the list of “election-related expenses,” as set forth in Section 82015, and the second is the list of “campaign” expenses in Regulation 18525.

***Staff Recommendation:** Section 82015 has the advantage of being a more detailed description of expenses that cannot be made from an officeholder account. On the other hand, as interested persons have pointed out, Section 82015 could (without further construction) preclude the use of officeholder funds to prepare budgets and campaign disclosure statements for the officeholder committee itself. Based on this and the fact that Regulation 18525 would continue to apply to officeholder expenditures from other campaign bank accounts, staff recommends the use of the Regulation 18525 standard. The language of the proposed regulation reflects this recommendation.*

**(2) May officeholder funds be used to pay any administrative fines or civil judgments?** SB 145 provides that officeholder funds may be used for any purpose related to holding office. However, the statute specifically states that these funds may not be used for contributions to other committees. There is no language similarly prohibiting any other uses of these funds, other than the general “personal use” restrictions in chapter 9.5, article 4. Thus, the only inquiry under the new statutory language is whether the civil judgment or fine is related to holding office or is it actually an expenditure for campaign purposes. ***Staff Recommendation:** Staff proposes that no such prohibition be included. Consistent with this proposal the prohibition does not appear in the proposed regulation. However, the issues raise a larger issue of whether campaign funds should be used to pay fines. We recommend that if the Commission agrees this is an inappropriate practice, that the Commission should direct staff to look at the issue globally and develop a future legislative proposal.*

### ***III. New Issues and Language***

In addition to revisiting the issues noted above, staff has added language to deal with new issues identified since the emergency adoption of these regulations.

**(1) Transfers In and Out of Officeholder Committees (18531.62(d)).:** At the January Commission meeting staff described the statute’s prohibition on transferring officeholder funds to any other committee in order to preserve the contribution limits of Proposition 34. Not discussed was whether campaign funds held in campaign accounts after an election can be transferred into the officeholder account. Staff believes that allowing transfers into an officeholder committee would be advantageous and not subject to abuse. This language has been added to the regulation.

**(2) Multiple Officeholder Committees (18531.62(e)(4).):** In some cases, officeholder accounts may overlap. For example an officeholder leaving the Assembly for the Senate may have an Assembly officeholder account open for 90 days after leaving the Assembly. But the same officeholder may establish his new Senate officeholder account the day after the Senate election. To avoid multiple officeholder contributions to the same officeholder during the same calendar year, new language has been added to subdivision (e)(4) that would impose a single contribution limit (individual and in the aggregate) on the two accounts -- the higher of the two applicable limits.

**(3) Reopening Officeholder Committees (18531.62(g)(3).)** As part of the termination process applicable to candidate campaign committees, Regulation 18404.1 also permits the reopening of campaign committees after termination. Staff has included new language allowing the reopening of officeholder committees for the same reasons and under the same circumstances as other committees.

### **III. Shirley Grindle Comment Letter**

On March 6, 2007, Shirley Grindle submitted the following comments and questions pertaining to the emergency regulations and accompanying memorandum presented in January.

*1. What is the contribution limit per year for contributions made to an officeholder account?*

Since the emergency regulations were adopted (and in response to a comment from Commissioner Leidigh), Regulation 18545 is being amended in the permanent adoption packet and sets out the contribution limits.

*2. Is a contribution to an officeholder account aggregated with campaign contributions made by the same contributor to 1) the prior election cycle in which the officeholder was elected to office, or 2) the next election cycle to run for the same office, or 3) to a future election cycle for a different elective state office (and what happens if an officeholder is not running for a different elective state office -- what are his officeholder contributions aggregated with in that case)?*

The revised regulation uses the date of receipt of the contribution as the trigger for cumulation. If a contribution is received *during* the term of office for which the officeholder account was created and the elected state officer maintains a committee for election to state office at any time during the term, cumulation applies.

*3. Why is attribution not required?*

Attribution is required in some cases. See answer below.

*4. Is there a conflict between Reg. 18531.63 and Reg. 18531.64 with regard to cumulating officeholder contributions and campaign contributions?*

As an initial matter, Ms. Grindle's letter reveals an ambiguity in the language of subdivision (g)(1) of Regulation 18531.62. The language adopted in the emergency regulation provides:

"Prior to the required date of termination, an individual currently holding elective office may redesignate the officeholder account (and any remaining funds therein) for a future term to the same elective office by amending the Statement of Organization for the committee to reflect the redesignation for the future term of office."

This provision was intended to allow an officeholder committee to be used as an officeholder committee for the officeholder's next term in the same office. However, the language suggests that the officeholder committee could be redesignated to a future campaign committee. This was not the intent behind the language, nor would this be allowable under the statute. The language should read:

"Prior to the date the elected state officer's term of office ends or he or she leaves that office, whichever is earlier, the officer may redesignate the officeholder account (and any remaining funds therein) as an officeholder committee for a future term to the same elective office by amending the Statement of Organization for the committee to reflect the redesignation for the future term of office."

The reworded language should clarify the ambiguity.

Within this narrower context, the regulation does allow redesignation without requiring attribution to specific contributors. Attribution is required in new (d)(1)(B) in relation to transfers into the officeholder account.

Appendix 1. Regs. 18531.62, Regs. 18544, 18545

Appendix 2: SB 145

Appendix 3: Grindle Comment Letter